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(3)

No. 98-983

CECELIA LACKS,

Petitioner

v.

FERGUSON-FLORISSANT REORGANIZED SCHOOL DISTRICT, R-2

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals For the Eighth Circuit

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Motion by Pen American Center , The American Association of University Women, the American Booksellers Foundation for Free Expression, American Society of Journalists and Authors, The Authors Guild, Feminists for Free Expression, The Institute for First Amendment Studies, Journalism Education Association, The National Campaign for Freedom of Expression, The National Council of Teachers of English, the National Coalition Against Censorship, the National Education Association, the National Writers Union, and Young Playwrights, Inc. for Leave to File Brief *Amici Curiae* In Support of Petition for Certiorari with Brief Attached

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE IN SUPPORT OF PETITION FOR CERTIORARI

Pen American Center ("PEN"), The American Association of University Women, ("AAUW"), the American Booksellers Foundation for Free Expression ("ABFFE") American Society of Journalists and Authors, The Authors Guild, Feminists for Free Expression (FFE), The Institute for First Amendment Studies (IFAS), Journalism Education Association (JEA), The National Campaign for Freedom of Expression, The National Council of Teachers of English, the National Coalition Against Censorship, the National Education Association, the National Writers Union, and Young Playwrights, Inc. the, hereby move, pursuant to Rule 37.2, for leave to file a brief *amici curiae* in support of the petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit. Petitioner has consented to the filing of this brief, but Respondent has declined to consent to this brief. A copy of the proposed *amici* brief is attached. [1]

As noted in the various "Statements of Interest" of the *Amici* listed above, all of the groups have as their mission the protection of First Amendment rights in the educational and creative process. While they agree that important First Amendment due process rights are implicated by the decision below, as explained in the Petition for Certiorari, they are concerned that the decision of the Eighth Circuit will have a broader chilling and detrimental effect on the exercise of First Amendment

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[1] In response to a request for consent by Respondent to the filing of this brief, Respondent's counsel stated that he "was not aware of any relevant matter that has not already been brought to the Court's attention."

rights by teachers and students in the educational process. We believe that the presentation of that point of view will be of considerable help to the Court.

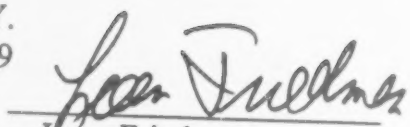
This case is important to teachers throughout the country. Teachers should not have to be concerned about job security when they follow an approved curriculum and when they follow established and accepted methods to promote discussion and learning and their students' exploration and expression of ideas. The First Amendment rights of teachers should not be censored in the classroom, except when necessary to achieve legitimate educational goals and then only when adequate notice has been afforded. This is especially true if the teachers have acted in a responsible manner. Furthermore teachers should have the right to use innovative methods proven to help their students learn, as long as the methods are within the approved curriculum of the district.

The decision below promises to create serious confusion and even alarm and dismay among educators around the country, who must guard now what they say and teach. This Court should review the obviously flawed decision of the Eighth Circuit below, because it raises issues of great import to the governance of the public education system, and because of the need for greater uniformity and predictability in the implementation of important constitutional principles.

It is hereby requested that the Court grant leave to file the attached brief of the *Amici* listed above.

Respectfully submitted,

Dated: New York, N.Y.
February 3, 1999



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INTEREST OF *AMICI CURIAE* [1]

Amici are public interest organizations who have as their mission the protection of First Amendment rights in the educational and creative process. They believe that the decision below has serious implications for the exercise of First Amendment rights of students and teachers in the public school context. The decision tells teachers that it is dangerous to use books or teaching techniques that some group might find offensive or controversial, because that might put the teacher's job and career at risk. Teachers will shy away from such materials and avoid innovative teaching methods that would help their students express themselves and explore new ideas.

The case does not present the question of whether teachers have a First Amendment right to use profanity in the classroom or permit students to do so. Rather the case presents the issue of whether it is constitutionally permissible to make a teacher a scapegoat or fire her for using a particular teaching technique that she had used for years, without first putting her on notice that use of that method is no longer permitted.

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[1] Counsel for a party did not author this brief in whole or in part and no person or entity, other than the *amici curiae*, its members, or counsel, have made a monetary contribution to the preparation or submission of the brief.

REASONS FOR GRANTING THE WRIT

THE ACTIONS OF THE SCHOOL BOARD TERMINATING PETITIONER FROM HER TEACHING POSITION CONSTITUTED A SERIOUS VIOLATION OF THE FIRST AMENDMENT AND THE DECISION BELOW UPHOLDING THAT TERMINATION WILL HAVE SERIOUS REPERCUSSIONS ON THE CONSTITUTIONAL RIGHTS OF TEACHERS THROUGHOUT THE COUNTRY

Introduction

This case lies at the intersection of a number of serious and difficult legal, pedagogical and political currents in public education today. [2]

First is the right of students, protected under the First Amendment, to express themselves in a school setting and to obtain access to ideas, books and other teaching materials, albeit in a more limited manner than in a full public forum.

Second is the right of teachers, also protected by the Constitution, to foster and encourage their students' intellectual development by innovative educational methods within approved limits of the curriculum and to be afforded a reasonable amount of "breathing room" in

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[2] The Lacks case has been the subject of considerable discussion and debate around the country. See e.g., "Hey Teacher, Watch What You Say," Boston Globe, September 13, 1998; "Free Speech in the Classroom," American Lawyer, August 17, 1998, p. 31; "Firing of Cissy Lacks Was Disruptive," St. Louis Post-Dispatch, July 24, 1998, p. B6.

the classroom to promote discussion, learning and the exploration of ideas.

Third is the duty of school boards and administrators to enforce proper codes of conduct upon both students and teachers and to insure that the educational system is not disrupted by language and actions that would be unruly and distracting to the schools' educational mission.

Fourth is the growing influence of political and ideological considerations unrelated to the educational mission of the schools by parents, voters, and interest groups seeking to effect how teachers and school boards establish and implement the curriculum.

Fifth, and the one directly involved in this case, is the need to insure that whatever rules are established to accommodate the conflicting currents noted above, they afford clear warning and notice so that teachers and students are clearly informed about school policy and forewarned about any serious consequences that may ensue from transgression of those rules.

In this case, all of the currents collided. Petitioner Lacks, a distinguished, prize-winning teacher with more than twenty years experience, gave an approved assignment to her 11th grade English class. In accordance with a creative teaching method officially recommended and followed within the district — an approach Lacks had used successfully for years with no complaints -- students prepared plays in which they used dialogue natural to the characters they created. [3] The students' recitation of the plays in class was videotaped so that the students would observe themselves speak and, in this way, improve their oral presentation skills. The dialogue of the characters

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[3] The theory behind these exercises was to allow students to use their own experiences as a basis for their writing and thus to open up the creative process.

within some of the plays contained profanity and racial slang, as was appropriate to the actions of the characters within the play.

It was established at trial that other teachers in the district had used the same method in the past, other students' creative writing contained profanity and at least one play containing profanity had not only been read aloud in class but performed at a school-sponsored, public function. No disciplinary action had previously been taken against either the students or the teachers involved.

Here, however, the school principal took umbrage at the videotape of black students using profanity in the dialogue of the characters they created. The principal told another student that he was offended by the drama exercise since it constituted an example of "black students acting a fool and white folks videotaping it." Tr. 1392. Disciplinary action was instituted against petitioner Lacks for failing to enforce the Student Discipline Code, particularly the requirement that students not use "profanity." Despite her outstanding record, [4] despite the fact that no other teacher had ever been sanctioned for engaging in similar academic exercises and despite the fact that no disciplinary action was taken against the students who actually recited the profanity, Petitioner

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[4] Lacks' success in using this technique to reach hard-to-teach students is reflected in a letter from one of her former students, written after he learned that she had been fired: ". . . there is no way for us to just put our harsh reality or our violent and cruel society in our lockers till after school . . [When] a student walks in your classroom, you have no idea what he or she has gone through before that moment. And in an assignment if a student uses a profane word to explain their situation is it ignorance or an outcry? .... .Few people care enough to look past the hard shell.' " Quoted in Censorship News, #72 (Winter 1998-99). P. 1 Poems introduced at Lacks' administrative hearing demonstrated, according to one observer, "how her students moved from vulgarity to eloquence," Kornbluth, "Class Notes," The New York Times, April 24, 1996.

Lacks was terminated from employment by the Ferguson-Florissant Reorganized School District.

Following her termination, petitioner Lacks brought this action, claiming that her First Amendment rights had been violated since she did not receive fair notice that her conduct was covered by the provision under which she was terminated. A jury found in her favor, answering "no" to the interrogatory asking whether she had received fair notice that the anti-profanity provision applied to creative writing exercises. The Eighth Circuit reversed, holding that as a matter of law, the answer to that question was "yes".

A. The Legal and Educational Background

1. Extensive Confusion Exists as to the Governing Rules Relating to Teacher Use of Allegedly "Controversial" Materials

Lacks' case is neither atypical, nor an isolated incident. Teachers and administrators in many jurisdictions around the country are unclear about the rules governing "controversial" materials and about the latitude that students and teachers have in the give-and-take of classroom discussion. The lower federal courts and state courts are presented with these disputes regularly but have failed to provide a consistent or coherent analysis of these situations to guide educators.

For example, in New York City in December, 1998, a teacher was forced to seek a transfer from her public school because some parents objected to her use of a book entitled "Nappy Hair" in the classroom, despite the fact that the book was written by a leading black scholar who was seeking to create positive feelings in black students about kinky hair. See "Fallout from 'Nappy Hair' Furor," New York Times, December 11, 1998, p. A34.

That situation has not, so far, resulted in litigation, unlike a situation in Florida where a teacher brought suit after she was prohibited from using Kenneth Starr's grand jury report in class. See "Teacher Sues Over Starr Report Ban," Washington Post, December 6, 1998, p. A7. Likewise two teachers in Vaughn, New Mexico sued after they were suspended and then terminated for using a textbook and making certain comments that presented a negative view of the behavior of the Texas Rangers toward Mexicans. They were later paid over $500,000 in settlement of their suit against the school board. See "Fired Teachers Get $520,000," Albuquerque Tribune, November 19, 1998, p. A1 and A4. In North Carolina a high school teacher sued, alleging that her transfer to a middle school resulted in part from concerns about the content of a play which won second place in a statewide drama competition (the objections related to two characters in the play, one pregnant and unmarried, the other, a lesbian). See Boring v. Buncombe County Board of Education, 136 F.3d 364 (4th Cir. 1998)(en banc), cert. denied, 119 S.Ct. (1998). In another case in Tempe, Arizona, the school board prevailed against a parental challenge to inclusion of Mark Twain's "The Adventures of Huckleberry Finn," and William Faulkner's "A Rose for Emily" as part of the English curriculum in a freshman high school class. The parents objected to the books' use of racially derogatory epithets. See Montiero v. Tempe Union School District, 158 F.3d 1022 (9th Cir. 1998). In Colorado, a high school teacher was fired for showing to his English class the film "1900," directed by Bernardo Bertolucci, dealing with the rise of fascism, without obtaining the preclearance required for use of "controversial" materials. See Board of Education of

Jefferson County v. Wilder, 960 P.2d 695 (Colo. Sup. Ct. 1998). [5]

2. Legal Confusion Exists on the Proper Test to Be Applied, With the Result that Proper Notice Is Not Afforded to Teachers

One theme in the litigated cases is a tendency towards judicial deference to school administrators, following this Court's decision in Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988). Given that different administrators and districts will have different attitudes towards "controversial" materials, sometimes changing from year to year with turnover in personnel and elected officials, it is particularly critical that teachers receive clear notice of what is or is not permissible. Otherwise, teachers will exclude all but the blandest material for fear that error in judgment on their part will cost them their employment. At a minimum, to avoid a deadly chilling effect on the materials, ideas and educational content in the public school system and to insure that teachers' due process rights are protected, this Courts' guidance is needed to clarify that the rules must be well defined and applied prospectively.

The problem is compounded by the large number and wide range of materials that have been called "objectionable' or "controversial."

The American Library Association and the American Booksellers' Foundation for Free Expression (an amicus herein) sponsor a "National Banned Books

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[5] The frequency of such episodes may be a reflection of the increasing "politicization" of school curricula, with differing political interests groups wishing to insure that their point of view is presented in a classroom setting and that opposing points of view are eliminated.

Week" each year, highlighting the prominent works that have been challenged by parents and outside influence groups as inappropriate for school children. In October 1998, the Library Association reported that 600 books had been challenged over the past year by various parents and interests groups throughout the country, one of the highest number of challenges in recent years. Included among the challenged works were "The Adventures of Huckleberry Finn" (continuously attacked throughout the country because of the use of the word "nigger"); "I Know Why the Caged Bird Sings," (challenged in Ohio, Minnesota, Washington, California, North Carolina, Georgia and Maryland for sexual content and derogatory portrayal of white people); "Forever," by Judy Blume (challenged in Illinois); "The Client," "The Firm" and "The Pelican Brief," (removed from school libraries in Jackson County, W. Va.); "Death of a Salesman," (challenged for offensive language in Illinois); "Of Mice and Men," (challenged in Illinois, Ohio, Florida and Minnesota for offensive language). See "Books Under Debate," The Tennessean, November 30, 1998, p. 38.

In prior years, all of Stephen Kings' works were banned from a Jacksonville Florida, middle school library. "Don't Read This: Censorship of School Books" Scholastic Update, September 13, 1993, p. 15 (discussing other banned works such as "Catcher in the Rye" and "The Boy Who Lost His Face"). Among the other works challenged were Chaucer's "The Miller's Tale" from Canterbury Tales and Lysistrata (see Virgil v. School Board of Columbia County, Fla., 862 F.2d 1517 (11th Cir. 1989)). See also Pratt v. Independent School Dist. No. 831, Forest Lake, Minn., 670 F.2d 771 (8th Cir. 1982)(movie based on Shirley Jackson's "The Lottery" restored to junior high school and high school curriculum after removal by school board).

In many of these cases, the challenged books contained profane language, such as that involved in this case, yet the books were allowed to remain in the curriculum or school library, available to students, presumably because school officials concluded that their pedagogical and literary value outweighed concerns about language. Thus in the leading case of Board of Education, Island Trees Free School District v. Pico, 457 U.S. 853 (1982), this Court held that nine challenged books containing profane language could not be removed from the high school library on the basis of their ideological content, and a trial had to be held to determine the reason for their removal. Eventually, the books were restored to the library shelves of the schools involved. See "Banned Book Week: Right to Read vs. Right to Ban," Newsday, September 25, 1995, p. B16.

The nine books restored to the Island Trees school library contained many of the same words whose recitation by a student led to Petitioner Lacks' termination here. Thus The Fixer, by Bernard Malamud, contains the work "fuck" and "fucking"; Go Ask Alice, contains the words "shit," "piss" and "ass"; Slaughterhouse Five, contains the word "motherfucker"; Black Boy, by Richard Wright contains the word "nigger." See Pico v. Board of Education Island Trees Union Free School District, 628 F.2d 404, 421, fn. 1 (2d Cir. 1980)(Mansfield J., dissenting) reversed, 457 U.S. 853 (1982).

Presumably these books may be read by the students in Island Trees School District as well as in other schools around the country and may be assigned reading in many schools. Presumably, many or most of these schools also impose "no profanity" rules as part of the student code of conduct. Yet the decision of the Court below suggests that if a teacher asks students to read and comment on their favorite passage from those books in open class, and the student's chosen passage contains one

of those words, such recitation could lead to the dismissal of the teacher, on the ground that she did not enforce the student discipline code prohibiting "profanity."

Indeed that was precisely the position taken by one of the witnesses for the school board in this case. One of the administrators who made the decision to bring charges against Petitioner Lacks, Barbara Davis, stated that as she read the Student Discipline Code, it prohibited a student from reading aloud from an assigned book (such as those mentioned above) if it contained any profanity. Tr. 1700. Both the students reading the word and the teacher assigning the passage would be subject to discipline even if the book were lawfully within the assigned curriculum. Merely to state that proposition shows the hazards and perils of the decision below, and the chill it will likely have on assignments and classroom discussion.

B. Lack of Notice

This case does not require this Court to resolve the issue of what kinds of books may be properly assigned to students in class and under what circumstances school boards may restrict student access to works containing profane words. Nor is this Court being asked to decide whether students have a constitutional right to read aloud every word from an assigned book or whether teachers can be prohibited from allowing such recitation.

What the case does require is for this Court to insure that school policy about "controversial" speech and materials is set forth with sufficient detail and clarity to fairly inform teachers of conduct that could result in termination of employment and that school policy in this area must in fact be based on legitimate pedagogical considerations.

The problem may be illustrated by an earlier case from the First Circuit. Keefe v. Geanakos, 418 F.2d 359 (1st Cir. 1969). In that case a high school teacher read an article to his senior high school class from the Atlantic Monthly dealing with the origin of the phrase "Up Against the Wall, Motherfucker." The teacher was fired for violating a school regulation requiring that "Teachers shall use all possible care in safeguarding the health and moral welfare of their pupils, discountenancing promptly: vandalism, falsehood, profanity, cruelty and other form of vice." 418 F.2d at 362, fn. 10 (emphasis added). The Court of Appeals found the article "scholarly, thoughtful and thought-provoking" and its use of the offending word was appropriate in context. The court posed the question as follows: " . . . whether a teacher may, for demonstrated educational purposes, quote a 'dirty' word currently used in order to give special offense, or whether the shock is too great for high school students to stand." 418 F.2d at 361. The court indicated that the regulation quoted above did not give proper notice that use of the word by a teacher as part of a proper educational lesson was prohibited. "We believe it equally probable that the plaintiff will prevail on the lack of any notice that a discussion of this article with the senior class was forbidden conduct." 418 F.3d at 362. The Court directed that an injunction issue blocking any disciplinary action against the teacher involved. See also Hosford v. School Committee of Sandwich, 421 Mass. 708, 659 N.E.2d 1178 (Ma. Sup. Jud. Ct. 1996)(teacher cannot be disciplined for engaging in brief pedagogical discussion of vulgar words in class).

If the anti-profanity provision quoted in the Keefe case did not give a teacher notice that actually reading an article with an offending word violated the student disciplinary code, then how could an almost identical provision give a teacher notice that she violated the same

type of code simply by allowing a student to read the word in a creative writing exercise?

This Court has established in many different contexts that the Constitution requires advanced notice of what is permissible or not permissible in the area of First Amendment rights. Indeed that is the very basis for the First Amendment overbreadth doctrine. See Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, 482 U.S. 569, 574 (1987)(law infringing First Amendment rights may be challenged by person whose own conduct not constitutionally protected "because it threatens others not before the court – those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution . . .").

In Keyishian v. Board of Regents, 385 U.S. 589, 604 (1967), this Court noted that teachers must be given advance notice of what expressive conduct may lead to sanctions against them. "The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed."

Justice Stevens noted in dissent in Bethel School District v. Fraser, 478 U.S. 675, 691-692 (1986)(Stevens, J. dissenting): " . . . if a student is to be punished for using offensive speech, he is entitled to fair notice of the scope of the prohibition and the consequences of its violation. The interest in free speech protected by the First Amendment and the interest in fair procedure protected by the Due Process Clause of the Fourteenth Amendment combine to require this conclusion."

A fortiori, a teacher punished because a student (for a creative writing assignment) created characters who use speech some would find offensive is entitled to such clear notice, particularly when the teacher was punished

far more severely than the student in Bethel -- termination as opposed to the student's three-day suspension.

The decision below promises to create serious confusion and even alarm and dismay among educators around the country, who must guard now what they say and teach. This Court must review the obviously flawed decision of the Eighth Circuit below, because it raises issues of great import to the governance of the public education system, and because of the need for greater uniformity and predictability in the implementation of important constitutional principles.

CONCLUSION

For the reasons stated above, the writ of certiorari should be granted.

Dated: New York, N.Y.
February 3, 1999

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APPENDIX

STATEMENTS OF INTEREST OF AMICI CURIAE

PEN AMERICAN CENTER

PEN American Center ("PEN") is an organization of 2,400 novelists, poets, essayists, translators, playwrights, and editors, chartered to defend free and open communication within all nations and across national boundaries. American PEN has taken a leading role in attacking restrictive laws, rules, regulations and practices that censor, curb, or limit freedom of speech or expression in the nation.

In 1996 it awarded Petitioner Cecilia Lacks the PEN/Newman's Own First Amendment award, sponsored by our organization and actor Paul Newman. The award was made to recognize her dedicated actions in preserving, protecting and advancing First Amendment rights in this nation. PEN believes that the legal fight at issue here has important implications for writers and teachers around the country since the decision below suggests that generalized student disciplinary codes can be used to censor and sanction teachers and writers who take no action themselves but simply allow their students to engage in protected expressive conduct.

AMERICAN ASSOCIATION OF UNIVERSITY WOMAN

For well over a century, the American Association of University Women (AAUW), an organization of 150,000 members, has been a catalyst for the advancement of women and their transformations of American society. In more than 1,500 communities across the country, AAUW members work to promote education and equity for all women and girls, lifelong learning, and

positive societal change. AAUW plays a major role in activating advocates nationwide on AAUWs priority issues. Current priorities include gender equity in education, reproductive choice, workplace, and civil rights issues. AAUW vigorously resists any attempts, whether by special interest groups, branches of government, or other sources, to ban or censor books or other media.

AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRSSION

The American Booksellers Foundation for Free Expression ("ABFFE") was organized in 1990 by the American Booksellers Association ("ABA"). With over 3,500 members doing business in 5,000 locations, ABA is the leading association of general interest bookstores in the United States. ABFEE's mission is to inform and educate booksellers, other members of the book industry and the public about the dangers of censorship and to promote the free expression of ideas, particularly freedom in the choice of reading materials.

AMERICAN SOCIETY OF JOURNALISTS AND AUTHORS

The American Society of Journalists and Authors is the national organization of leading independent non-fiction writers. Our 1000-plus members have a charter interest in the free and open exchange of ideas, information and opinions. We have a special concern that the books we write, both trade books and textbooks, be considered for the classroom on their merits rather than on unanticipated and irrational biases. Some of our members write specifically for a young audience, all of our members see today's children as tomorrow's readers

and possibly tomorrow's writers and prospective ASJA members.

THE AUTHORS GUILD

The Authors Guild, founded in 1912, is a national non-profit association of more than 7,700 professional, published writers of all genres. The Guild counts journalists, historians, biographers, and other writers of nonfiction and fiction as members. Guild members have won many awards, including the Pulitzer and Nobel Prizes, and National Book awards. Their works are valuable contributions to the creative and intellectual fabric of our society. The Authors Guild works to promote the professional interests of authors in various areas, including freedom of expression. The Authors Guild views this case, and all cases which threaten free expression, as bearing directly on the ability of authors to carry on their business of writing as a livelihood.

FEMINISTS FOR FREE EXPRESSION

Feminists for Free Expression (FFE) is a national, non-profit organization composed of a diverse group of feminist women and men, including educators, lawyers, writers, and scholars, all of whom share a commitment to both gender equality and freedom of expression. We believe that genuine feminism encourages individual intellectual and artistic growth, and that teachers who encourage students to express themselves in class without fear of reprisal or censorship are crucial to such growth. To punish such teachers because of the form in which student communication is expressed does not serve the interests of students, teachers, or indeed the nation.

THE INSTITUTE FOR FIRST AMENDMENT STUDIES

The Institute for First Amendment Studies (IFAS) is a non-profit education and research organization that focuses on the First Amendment. Among other things, IFAS carefully tracks church/state issues to identify situations in which organizations and/or individuals utilize the power of the state to impose their religious viewpoints upon others. Efforts to suppress free speech and censor materials in schools often derive from the desire to impose a particular religious perspective. In our view, academic freedom and free speech, essential freedoms in their own right, are also necessary to safeguard separation of church and state and freedom of religious expression.

JOURNALISM EDUCATION ASSOCIATION

The Journalism Education Association (JEA) represents more than 2,000 journalism teachers and publication advisers across the United States. It upholds the rights of students and teachers to exercise their freedom of expression as guaranteed by the First Amendment to the Constitution of the United States. JEA believes that teachers should empower students to make decisions in a learning atmosphere where students will actively practice critical thinking and decision making, and it believes students should seek out points of view and explore a variety of information sources in their decision making. In addition, JEA thinks students should have a free, robust and active forum for expression without prior review or restraint, and it thinks teachers should show trust in students by allowing them to learn in a caring environment. First Amendment rights of teachers should not be censored in the classroom, if the teachers

have acted in a responsible manner, Teachers should have the right to use innovative methods to help their students learn as long as the methods are within the approved curriculum of the district. This case is important to teachers throughout the country. Teachers should not be concerned about job security when they allow their students to practice their constitutional right of responsible freedom of expression.

NATIONAL CAMPAIGN FOR FREEDOM OF EXPRESSION

The National Campaign for Freedom of Expression is a national, nonprofit organization comprised of artists, arts organizations, audience members, and concerned citizens dedicated to promoting First Amendment rights as applied to the support, creation, and presentation of arts in American culture. NCFE has litigated and filed amicus curiae briefs in several cases involving freedom of expression since its founding in 1990. On behalf of its supporters, NCFE has a broad interest in promoting the free speech rights of arts educators and arts students to be free from unreasonable administrative control over the content and viewpoint expressed in their works.

NATIONAL COUNCIL OF TEACHERS OF ENGLISH

The National Council of Teachers of English, a professional association of educators of English studies, literacy and language arts, is dedicated to improving the teaching and learning of English and the language arts at all levels of education. Its 80,000 members and subscribers worldwide are elementary, middle and high school teachers, supervisors of English programs, college

and university faculty, teacher educators, local and state agency English specialists, and professionals in related fields.

NATIONAL COALTION AGAINST CENSORSHIP

The National Coalition Against Censorship (NCAC) is an alliance of forty-eight national nonprofit organizations, including religious, educational, professional, artistic, labor and civil rights groups. United by a conviction that freedoms of thought, inquiry and expression are indispensable to a healthy democracy, they work to educate their members and the public about the dangers of censorship and how to oppose it. The positions advocated by NCAC in this brief do not necessarily reflect the positions of each of its participating organizations.

NATIONAL EDUCATION ASSOCIATION

The National Education Association (NEA) is a nationwide employee organization with approximately 2.4 million members, the vast majority of whom are teachers employed by public school districts colleges and universities. The constitutional issues at stake sharply and directly implicate the core interests of NEA and its members, for if the lower court's decision is allowed to stand, it will have a devastating and chilling effect on the ability of educators to use innovative and creative teaching techniques in the classroom. The NEA believes that this case does <u>not</u> present the question whether teachers have a First Amendment right to use profanity in the classroom or to permit students to do so. Rather the question presented is whether a school district can fire a veteran teacher for using a particular teaching method, a pedagogically-sound technique she has used successfully

for years, without first putting her on notice that use of that method is no longer permitted. [1]

NATIONAL WRITERS UNION

The National Writers Union is an affiliate of the United Auto Workers and the AFL-CIO. The NWU represents nearly 6,000 freelance writers, including journalists, book authors, poets, short-fiction writers, business and technical writers, academics, textbook and children's book authors, cartoonists, and workers in all genres. The NWU is committed to freedom of expression in all media.

YOUNG PLAYWRIGHTS

Young Playwrights, Inc. founded in 1981 by Stephen Sondheim and members of the Dramatists Guild, exists solely to nurture the artistic voices of America's youth through the art of playwriting. YPI's work is built on the belief that every young person has something important to say and the inherent right to be heard. It is imperative that student's constitution al right to free speech be not only protected but honored and encouraged. The same right to free expression should be afforded to educators charged with the development of America's future. Empowering the dedicated classroom teacher to employ innovative, pedagogically sound techniques in the classroom is essential to the cultivation of student's artistic growth. This case tests not only the educator's right to promote the free exchange of ideas but the acknowledgement of America's youth as protected and valued citizens.

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[1] Petitioner Lacks was a member of NEA at the time of the events in question. Her litigation is being financed under NEA's Unified Legal Services Program.